IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

CRL.A.No. 1378 of 2006(C)

SC.419/2005 of ADDL. SESSIONS COURT (ADHOC), FAST TRACT COURT - I, PATHANAMTHITTA
CP.152/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI

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APPELLANT/ACCUSED:

SHAJI S/O.THANKAPPAN,
C.NO.438, CENTRAL PRISON, TRIVANDRUM-12.

BY ADV. S.D.ASHOKAN(STATE BRIEF)

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY
A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1378 OF2006

Dated this the 4th day of January, 2007

JUDGMENT

The appellant is the accused in Sessions Case No.419 of 2005 on the file of the Additional District and Sessions Court (Ad-hoc) Fast Track Court-I, Pathanamthitta. He was charge sheeted by the police for the offence punishable under Section 307 I.P.C.

2. The prosecution case against the appellant was that on 24.1.2004 at about 9 p.m., he set fire to a mat and some clothes in his bedroom and lifted his wife, PW.2, who was sleeping on the cot and held her above the fire and then dropped her into the fire as a result of which she sustained burn injuries. To prove the case against the appellant, the prosecution examined PWs.1 to 9 and produced Exts.P1 to P7 as well as MOs.1 to 4. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. The appellant denied the allegations levelled against him and stated that the police had foisted the case against him. The trial court, relying on the evidence adduced by the prosecution, found the appellant guilty under Section 307 I.P.C., convicted him thereunder and

sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of two years. The entire fine amount, if realised, was directed to be paid to PW.2 as compensation. The above conviction and sentence are challenged in this appeal.

3. This appeal is filed through the jail authorities. Since the appellant is not defended by a counsel of his choice, a State Brief has been appointed to defend his case. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant raised three points : (i) the trial court went wrong in accepting the evidence of PW.2 to find the appellant guilty of the charge as there was no independent evidence to support the prosecution case, (ii) the trial court went wrong in placing reliance on the evidence of PWs.3 and 4 as occurrence witnesses and (iii) the sentence awarded is excessive.

5. PW.2 is the victim. According to PW.2, her marriage with the appellant had taken place about 22 years ago. It was a love marriage and

two children were born in the wedlock. They belong to different community. This witness stated that the appellant used to quarrel with her after consuming liquor and this created an unhealthy atmosphere in the house. She gave evidence to the effect that on 24.1.2004 her eldest daughter and son-in-law came home to go to the hospital and at night they went to the house of her father, which was situated nearby, as her house was small. She further stated that at about 9 p.m. she found her husband lying in the courtyard and she asked him to come inside the house. PW.2 further deposed that the appellant then came inside the house, set fire to a mat and some clothes, carried her and held her above the fire for sometime and then dropped her into the fire. On hearing her cry, her father, daughter, son-in-law and PW.3, a neighbour, came to the house and removed her to the hospital where she was treated by PW.6. She stated that the appellant used to hurt her from the beginning of their married life and also did not like her accompanying her son-in-law. She even denied the suggestion that the case was foisted against the appellant as there was some dispute between her father and the appellant. The trial court accepted the evidence of PW.2. This Court is of the view that the evidence of PW.2 cannot be discarded merely for the reason that no strong motive was established for committing the offence. It is also to be noted that PW.2, who had been married for 22 years, would not have given

evidence against her husband unless there was some strong reason for doing so. It has also come out in evidence that there was some hubbub between the appellant and PW.2 on the day of the incident. Further, there is no explanation as to why the appellant was absconding for more that 1 ½ years. The subsequent conduct of the appellant would also show that the evidence of PW.2 can be believed. Hence, the trial court was fully justified in accepting the evidence of PW.2 to find the appellant guilty of the offence alleged against him.

6. The evidence of PWs.3 and 4 also supports the version given by PW.2. PW.3 is a neighbour and he stated that on hearing loud cries from the house of PW.2, he came out of his house and rushed to the house of PW.2. He further stated that he saw fire in the bedroom of the house of PW.2 and the appellant holding PW.2 above the fire . He further stated that he and the other neighbours helped to put off the fire and that the local people and relatives helped to remove PW.2 to the hospital. PW.4, the father of PW.2 gave evidence in tune with that of PWs.2 and 3. He stated that himself, PW.3, and the daughter and son -in-law of PW.2 came to the spot on hearing the cry and had seen the appellant holding PW.2 over the fire. Hence, this Court is of the view that these witnesses can be considered as occurrence witnesses. PW.5 was the attester to Ext.P3 scene

mahazar. PW.6 was the doctor who had examined PW.2 and issued Ext.P4 wound certificate. He stated that he had noted large area of burns extending from the gluteal regions to the thigh and above the back of knee on both lower limbs. This witness further stated that he had referred PW.2 for surgery. Even though the evidence of PW.6 would not show that the injuries were fatal, his evidence would prove that the injuries on the body of PW.2 were burn injuries. The evidence of PW.6 would show that the prosecution succeeded in proving the case against the appellant. PW.7 was the Assistant Sub Inspector of Police who recorded Ext.P2 First Information Statement of PW.2 and PW.8, the Sub Inspector of Police, registered Crime No.14 of 2004 against the appellant. PW.9, the Circle Inspector of Police, concluded the investigation and laid the charge sheet. On an overall appreciation of the entire evidence, this Court is of the view that the finding entered by the trial court does not require any interference.

7. With regard to the contention that the sentence awarded by the court below is excessive, it is seen that the prosecution failed to prove any strong motive for the appellant to commit the offence alleged. Further, the prosecution had not chosen to examine the daughter and son-in-law of PW.2 who had come to the house on hearing the cry of PW.2. That apart, PW.6 who issued Ext.P4 wound certificate was not in a position to say

whether the burn injuries were fatal. Considering the above aspects, this Court is of the view that a lenient view can be taken. In the above circumstances, the sentence of rigorous imprisonment for a period of five years awarded by the court below is reduced to rigorous imprisonment for a period of three years. The sentence of fine is also set aside.

The Crl. Appeal is allowed in part.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO.1378/2006

JUDGMENT

4TH JANUARY, 2006.